

Appl. No. 10/054,628
Docket No. 7571RD
Amdt. dated May 12, 2008
Reply to Office Action mailed on January 11, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1-6, 8, 9, 11, and 13-26 are pending in the present application.

Claims 7, 10 and 12 were previously canceled without prejudice.

Claim 3 is original.

Claims 1, 19 and 21 are amended herein.

Claims 2, 4-6, 8, 9, 11, 13-18, 20 and 22 were previously presented.

Claims 23-26 are new.

The amendments to independent claims 1, 19 and 21 are intended to restore them to the forms in which they were presented in Applicants' Submission Of Amendment With Filing Of RCE, filed February 28, 2007, for the reason explained in the Remarks below.

New claims 24-26 are the same as previously canceled claims 7, 10 and 12, respectively, and are presented again herein for the reason explained in the Remarks below.

Support for new claim 23 is found in the specification at page 24, lines 19-24 (weight percent of emollient); page 18, lines 8-15 (fumed silica as rheological agent); page 17, lines 31-33 (weight percent rheological agent); pages 12-16 (skin care ingredients generally); page 14, line 30 – page 15, line 2 (skin care ingredient particle size); page 14, lines 20-25 (weight percent skin care ingredient); page 29, lines 19-32 (wax and weight percent wax).

Applicants believe that these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

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Rejection Under 35 USC §103(a) Over Roe in view of Vega et al.

Claims 1-6, 8, 9, 11, and 13-22 stand rejected under 35 USC §103(a) as being unpatentable over Roe (USPN 5,609,587) in view of Vega et al. (USPN 6,153,209).

Applicants believe, and respectfully submit, that Vega et al. does not qualify as prior art upon which a §103(a) rejection may be based. Applicants overlooked certain information to this effect when the Office first cited Vega et al. in its Office Action dated 4/18/07.

The present application is a division of a prior application, Serial No. 09/563,638, filed on May 2, 2000 (claims in which were allowed and issued as U.S. Patent No. 6,570,054, issued to Gatto et al.). As such, the present application has a priority date of May 2, 2000.

The application for Vega et al. was filed September 28, 1999. It does not appear that Vega et al. was published prior to its issuance on November 28, 2000.

Without conceding the substantive merits of the Office Action of 1/11/08 or waiving any other arguments they may have, Applicants believe that Vega et al. only potentially qualifies as prior art under 35 U.S.C. §102(e)(2), as “a patent granted on an application for patent by another filed in the United States before the invention by the [present] applicant” In that regard, 35 U.S.C. §103(c)(3) provides:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

35 U.S.C. §103(c).

Pursuant to 37 CFR §3.73, the undersigned states that Application Serial No. 09/407,950 (which became USPN 6,153,209 issued to Vega et al.), and the parent to the instant application, Serial No. 09/563,638, were, at the time the presently claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person (The Procter & Gamble Company). The assignments for the Vega et

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al. application appear at Reel/Frame No. 010496/0424. The assignments for the division-parent to the instant application (Serial No. 09/563,638, USPN 6,570,054) appear at Reel/Frame No. 011118/0852, and the assignments for the instant application appear at Reel/Frame No. 015900/0565.

For the foregoing reasons, under 35 U.S.C. §103(c), Vega et al. does not qualify as prior art available to support a *prima facie* case of obviousness.

Applicants believe that the Office first cited the combination of Roe and Vega et al. in its Office Action dated 4/18/07, issued in response to Applicants' Submission Of Amendment With Filing Of RCE, filed 2/28/07. Accordingly, with the removal of Vega et al. as a prior art reference, Applicants have herein amended their claims to restore them to the form presented in their Submission Of Amendment With Filing Of RCE, filed 2/28/07.

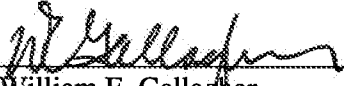
Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form for allowance. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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